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SENATE BILL 179

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Gay G. Kernan

AN ACT

RELATING TO DOMESTIC AFFAIRS; REQUIRING THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO PROVIDE BY RULE FOR DRUG TESTING OF A FOSTER HOME APPLICANT OR LICENSEE; PROVIDING FOR LICENSE DENIAL, REVOCATION, SUSPENSION, PROBATION OR REFUSAL FOR A FOSTER HOME APPLICANT LICENSEE WHO FAILS OR REFUSES A DRUG TEST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-7A-1 NMSA 1978 (being Laws 1981, Chapter 171, Section 1) is amended to read:

"40-7A-1. SHORT TITLE.--~~[Sections 1 through 8 of this act]~~ Chapter 40, Article 7A NMSA 1978 may be cited as the "Child Placement Agency Licensing Act"."

Section 2. Section 40-7A-3 NMSA 1978 (being Laws 1981, Chapter 171, Section 3) is amended to read:

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1 "40-7A-3. DEFINITIONS.--As used in the Child Placement  
2 Agency Licensing Act:

3 A. "child" means an individual under the age of  
4 eighteen years;

5 B. "child placement agency" means any individual,  
6 partnership, unincorporated association or corporation  
7 undertaking to place a child in a home in this or any other  
8 state for the purpose of foster care or adoption of the child;

9 C. "department" means the [~~human services~~]  
10 children, youth and families department;

11 D. "division" means the [~~social~~] protective  
12 services division of the department;

13 E. "drug test" means a reasonable collection and  
14 analysis procedure used to detect a controlled substance or  
15 controlled substance analog in the blood stream in violation of  
16 the Controlled Substances Act;

17 [~~E.~~] F. "foster home" means a home maintained by an  
18 individual having the care and control, for periods exceeding  
19 twenty-four hours, of a child who is abused, neglected,  
20 dependent or homeless and who is not placed for adoption;

21 [~~F.~~] G. "person" means any individual, partnership,  
22 unincorporated association or corporation; and

23 [~~G.~~] H. "secretary" means the secretary of [~~human~~  
24 services] children, youth and families."

25 Section 3. Section 40-7A-4 NMSA 1978 (being Laws 1981,

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1 Chapter 171, Section 4, as amended) is amended to read:

2 "40-7A-4. LICENSING--REGULATIONS--APPLICATION FOR  
3 LICENSE.--

4 A. An application for a license to operate a child  
5 placement agency shall be made to the division on forms  
6 provided and in the manner prescribed by the division. A child  
7 placement agency may be licensed either to place children in  
8 foster homes or in homes for adoption, or both. The division  
9 shall investigate the applicant to ascertain whether the  
10 applicant qualifies under the regulations promulgated by the  
11 division and shall provide by rule for performing a drug test  
12 on an applicant for a foster home license and on a foster home  
13 licensee seeking renewal. If qualified, the division shall  
14 issue a license valid for one year from date of issuance. A  
15 license shall be renewed for successive periods of time not to  
16 exceed three years, as determined by the division, if the  
17 division is satisfied that the child placement agency is in  
18 compliance with the division's regulations. No fee shall be  
19 charged for a license.

20 B. No person shall operate a child placement agency  
21 or foster home without first being licensed to operate the  
22 agency or home by the division. Placement of a child in the  
23 home of a relative or guardian shall not require a license from  
24 the division under the Child Placement Agency Licensing Act. A  
25 person desiring to operate a foster home under the authority of

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1 a child placement agency shall submit to a drug test and shall  
2 obtain a license from the division through the child placement  
3 agency under which it will operate. The child placement agency  
4 shall certify to the division that the person is a suitable  
5 person to operate a foster home. The certification shall be on  
6 a form provided by the division and shall contain such  
7 information as the division requires. The division shall give  
8 notice of action taken upon a certification received from a  
9 child placement agency within thirty days from the receipt  
10 thereof and shall state the reasons for any denial. [~~No~~] A  
11 foster home shall not be certified by more than one child  
12 placement agency. A certificate shall be renewed for  
13 successive one-year periods if the child placement agency is  
14 satisfied that the foster home is in compliance with the  
15 division's regulations. When certified by a child placement  
16 agency, a foster home may receive a child for care from sources  
17 other than the certifying agency upon the written consent of  
18 the certifying agency.

19 C. Upon certification by a child placement agency  
20 that a person is suitable to operate a foster home, the child  
21 placement agency may place a child for foster care pending  
22 licensing of the foster home by the division. If the division  
23 declines to license, the child placement agency shall promptly  
24 remove the child from the placement.

25 D. The division shall prescribe and publish minimum

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1 standards and other regulations for licensing of child  
2 placement agencies and certification of foster homes. The  
3 prescribed minimum standards and other regulations shall be  
4 promulgated by the division no later than six months after the  
5 effective date of the Child Placement Agency Licensing Act and  
6 shall be restricted to:

7 (1) the responsibility assumed by the foster  
8 home or child placement agency for the shelter, health, diet,  
9 safety and education of the child served;

10 (2) the character, suitability and  
11 qualifications of the applicant for a license or certificate  
12 and of other persons directly responsible for the health and  
13 safety of the child served;

14 (3) the results of a drug test;

15 [~~(3)~~] (4) the general financial ability of the  
16 applicant for a license or certificate to provide care for the  
17 child served;

18 [~~(4)~~] (5) the maintenance of records  
19 pertaining to the admission, progress, health and discharge of  
20 the child served; and

21 [~~(5)~~] (6) the filing of reports with the  
22 division.

23 E. The regulations shall not proscribe or interfere  
24 with the religious beliefs or religious training of child  
25 placement agencies and foster homes, except when the beliefs or

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1 training endanger the child's health or safety.

2 F. The division may inspect child placement  
3 agencies and foster homes as necessary to ensure that they are  
4 in compliance with the provisions of the Child Placement Agency  
5 Licensing Act and regulations of the division.

6 G. Any person licensed or certified to operate a  
7 child placement agency or foster home under the provisions of  
8 the Child Placement Agency Licensing Act has the right to  
9 appeal any regulation [~~which~~] that the person believes has been  
10 improperly applied by representatives of the division or  
11 [~~which~~] that exceeds the authority granted to the division by  
12 the Child Placement Agency Licensing Act. The secretary shall  
13 designate a hearing officer or officers from the department to  
14 hear an appeal. The hearing officer or officers shall make a  
15 written recommendation to the secretary for resolution of the  
16 appeal. The secretary's decision shall be in writing and shall  
17 be the final administrative determination of the matter."

18 Section 4. Section 40-7A-6 NMSA 1978 (being Laws 1981,  
19 Chapter 171, Section 6, as amended) is amended to read:

20 "40-7A-6. REVOCATION OR SUSPENSION OF LICENSE--NOTICE--  
21 REINSTATEMENT--APPEAL.--

22 A. The division may deny, revoke, suspend, place on  
23 probation or refuse to renew the license of any child placement  
24 agency or foster home for:

25 (1) failure to comply with the division's

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1 rules;

2 (2) failure to pass a drug test; or

3 (3) refusal to submit to a drug test.

4 B. The holder of the license sought to be denied,  
5 revoked, suspended or placed on probation or that is not  
6 renewed shall be given notice in writing of the proposed action  
7 and the reason therefor and shall, at a date and place to be  
8 specified in the notice, be given a hearing before a hearing  
9 officer appointed by the secretary with an opportunity to  
10 produce testimony in the holder's behalf and to be assisted by  
11 counsel. The hearing shall be held no earlier than twenty days  
12 after service of notice thereof unless the time limitations are  
13 waived. A person whose license has been denied, revoked,  
14 suspended, placed on probation or not renewed may, on  
15 application to the division, have the license issued,  
16 reinstated or reissued upon proof that the noncompliance with  
17 the rules has ceased.

18 ~~[B.]~~ C. A person adversely affected by a decision  
19 of the division denying, revoking, suspending, placing on  
20 probation or refusing to renew a license may obtain a review by  
21 appealing to the district court pursuant to the provisions of  
22 Section 39-3-1.1 NMSA 1978.

23 ~~[C.]~~ D. When any license is denied, suspended,  
24 revoked or not renewed, the care and custody of any child  
25 placed pursuant to the Child Placement Agency Licensing Act

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1 shall be transferred to the certifying child placement agency  
2 or the division."

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